



Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0024; Notice 2]

Continental Tire North America, Inc., Grant of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Grant of Petition for Decision of Inconsequential
Noncompliance.

SUMMARY: Continental Tire North America, Inc., (Continental), has determined that certain passenger car tires manufactured between March of 2007 and June of 2009 did not fully comply with paragraphs S5.5(e) and S5.5(f) of Federal Motor Vehicle Safety Standards (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Continental has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (dated June 30, 2009).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Continental has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Continental's petition was published, with a 30-day public comment period, on April 7, 2010, in the

Federal Register (75 FR 17830). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2010-0024."

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5299, facsimile (202) 366-7002.

Affected are approximately 28,169 size 235/55R18 100V SL Continental brand CrossContact UHP model passenger car tires manufactured between March of 2007 and June of 2009 at Continental's plant located in Otrokovice, Czech Republic. A total of 8,858 of these tires have been delivered to Continental's customers. The remaining tires (approximately 19,311) are being held in Continental's possession until they can be correctly relabeled.

Continental explains that the noncompliance is that, due to a mold stamping anomaly, the sidewall marking on the tires incorrectly describes the actual generic name and number of the body plies. Specifically, the tires in question were inadvertently manufactured with "TREAD 6 PLIES: 2 POLYESTER + 2 STEEL + 2 NYLON; SIDEWALL 2 PLY POLYESTER." The labeling should have been "TREAD 5 PLIES: 1 RAYON + 2 STEEL + 2 NYLON; SIDEWALL

1 PLY RAYON." Continental states that all other sidewall identification markings and safety information are correct.

Continental argues that this non-compliant sidewall marking is inconsequential to motor vehicle safety as it "does not affect the safety, performance and durability of the tire; the tires were built as designed." In addition, Continental states that the tires comply with all other NHTSA requirements.

Continental said that it performs ongoing compliance testing "to assure tire performance" and that "all tires included in this petition will meet or exceed the performance requirements of FMVSS 139." Continental further states that "there will be no operational impact on the performance or safety of vehicles on which these tires are mounted."

Continental points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Continental also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Continental states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA DECISION: The agency agrees with Continental that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to

motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measureable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls do not contain steel plies, this potential safety concern does not exist.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 8,858¹ tires that Continental no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Continental has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Continental's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8

¹ Continental's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Continental as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 8,858 of the affected tires. However, the agency cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Continental notified them that the subject noncompliance existed.

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Claude H. Harris, Director
Acting Associate Administrator
for Enforcement

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